PETROLEUM ASSOCIATION OF WYOMING

951 Werner Court, Suite 100 fax (307) 266-2189

Casper, Wyoming 82601 e-mail: paw@pawyo.org

(307) 234-5333 www.pawyo.org

WRITTEN TESTIMONY BY DRU BOWER, VICE PRESIDENT

OF THE PETROLEUM ASSOCIATION OF WYOMING

AND ON BEHALF OF PUBLIC LANDS ADVOCACY

SUMBITTED TO THE UNITED STATES HOUSE OF REPRESENTATIVES

ENERGY AND MINERAL RESOURCES SUBCOMMITTEE

THE HONORABLE BARBARA CUBIN, CHAIRWOMAN

JULY 12, 2003

Madam Chairwoman and members of the Subcommittee, my name is Dru Bower and I am the Vice President of the Petroleum Association of Wyoming (PAW), specializing in public land issues. I am here today representing not only PAW, but also Public Lands Advocacy. We would like to thank the Subcommittee on Energy and Mineral Resources of the Committee on Energy and Commerce for the opportunity to testify at this field hearing regarding “Oil and Gas Development on Public Lands.”

PAW is Wyoming’s oldest and largest trade organization, the members of which account for over ninety percent of the natural gas and over eighty percent of the crude oil produced in the State. PAW is recognized as Wyoming’s leading authority on petroleum industry issues and is dedicated to the betterment of the state’s oil and gas industry and public welfare.

Public Lands Advocacy (PLA) is a non-profit organization whose members include major and independent petroleum companies as well as non-profit trade and professional organizations that have joined together to foster the interests of the oil and gas industry relating to responsible and environmentally sound exploration and development on federal lands.

In 1996, Wyoming supplied the nation with 3.4% of the total U.S. output of natural gas. In 2002, natural gas production for our state rose to 7.1% of the total U.S. output. Noteworthy is the fact that a significant percentage of Wyoming is managed by federal agencies.

Wyoming is a uniquely rural state comprised of 97,914 square miles and is the ninth largest state in the Union. Lands in the state, which are owned and controlled by the federal government equate to approximately forty-nine percent (49%) of the surface and sixty-six percent (66%) of the mineral estate. These federal lands are managed by agencies such as the National Park Service (NPS), United States Forest Service (USFS) and the Bureau of Land Management (BLM). The remaining 51% of the surface and 34% of the mineral estate are owned by private entities, the State of Wyoming and the Tribes.

Natural gas remains the most abundant and reliable clean burning fuel to meet national environmental objectives while enhancing the use of stable domestic fuel sources and federal lands must play a growing role in future US energy supplies. Prior to 1980, only 9% of all domestic oil and gas production came from federal land. According to the American Petroleum Institute (API), today federal lands produce about one third of domestic oil and gas, but are estimated to contain 77% of the oil and 60% of the natural gas

resources to be found in the US. In the short period from 1995 to 2003, there has been an increase of at least 75% in estimates of remaining undiscovered domestic oil resources and over 23% in estimates of undiscovered natural gas on federal lands. Despite greater knowledge of the occurrence of gas resources and increased demand for energy, federal policy toward energy development has become increasingly restrictive. PAW and PLA urge members of this committee to take steps to reverse this trend as outlined in the recommendations below.

FEDERAL REGULATORY PROCESS

The federal regulatory process is exhaustive and cumbersome. To comply with requirements of the Federal Land Policy and Management Act (FLPMA), agencies are required to prepare land use plans. The National Environmental Policy Act (NEPA) requires agencies to evaluate how proposed federal actions will affect the human environment. Environmental Assessments (EA) must demonstrate that impacts associated with a proposed action can be mitigated and that the net effects are not significant. If the EA shows a project has significant impacts, an Environmental Impact Statement (EIS) must be prepared which identifies and discloses the potential effects of the project, along with identified mitigation measures to be used if the project is approved.

Resource Management Plans (BLM) or Land and Resource Management Plans (USFS) have been developed for all federal lands. Each plan is subject to an extensive EIS process; the plans identify what areas will be available for oil and gas leasing and the stipulations to be applied to those leases (i.e. No Surface Occupancy (NSO), seasonal restrictions for wildlife protection, etc.). In addition, the plans establish operating standards that must be met before proposed projects are implemented.

Many land use plans were completed in the mid-to-late 1980s and federal agencies are currently undergoing land-planning revisions in several energy rich basins in the West. There is great concern within industry that when the plans are completed, there will be a net loss of public lands available for oil and gas leasing and the areas that are available will have more stringent stipulations for access with a limited duration of operation.

Before a lease parcel is actually included in a federal lease sale, BLM conducts a “Determination of NEPA Adequacy” (DNA) to ensure that leasing is consistent with existing plans. This determination indicates whether additional analysis is necessary before leasing occurs. (Similar DNA analyses are typically prepared before a project is allowed to proceed.)

It should be noted that once a lease has been issued, it becomes a contractual agreement between the federal government and the lessee. However, while the lease contract gives the lessee the exclusive right to develop the lease, it does not give the lessee the green light to start exploration or development activities. Every proposed project is subject to a site-specific NEPA analysis before a permit is approved by the agency. In addition, consultation with other agencies must occur. For example, consultations with the US Fish and Wildlife Service (USFWS) or a State Historic Preservation Office (SHPO) may be required if listed threatened and endangered species or cultural resource issues are involved, respectively. Each agency may require new restrictions that directly impact access and the economic viability of the project.

BLM has implemented several new Instruction Memoranda designed to make the process more efficient. These include:

ê Enhanced Consistencies in Conditions of Approval;

ê Cultural Resources Management (block clearances of 40 acres and modeling);

ê Revision of Onshore Order #1;

ê Revision of the Gold Book on Operations; and

ê Plans of Development (POD) Requirements (master POD addressing two or more proposed wells in close geographic proximity to one another that share common Drilling and Surface Use Plans).

These IMs are a positive step in the right direction and industry looks forward to their immediate implementation and enforcement in the field. In fact, industry hopes to work closely with BLM in its revisions of the Onshore Order No. 1 and the Gold Book on Operations. However, there are additional measures that must be taken to ensure timely and cost effective “access” to federal lands. We recommend that new

Instruction Memoranda be issued to address the following:

ê In order to eliminate costly and time-consuming redundant NEPA analyses, the agencies must utilize existing NEPA documentation by either tiering or incorporating by reference all existing NEPA analyses to avoid reanalyzing issues that have already been addressed and for which decisions have already been made. In other words, in areas where expanded development is proposed, no new resource data collection is necessary; simply a new cumulative effects analysis is required; and

ê No new cumulative effects analysis is necessary if a project proponent wishes to increase recovery of the resource by directionally drilling new wells from existing locations that were already approved and drilled under a previous decision document. Since no new surface disturbance will result, no further NEPA analysis is necessary.

In addition to addressing leased lands, their associated stipulations and lands unavailable for lease, other important factors must be considered. For example, even on leased lands subject to only standard lease terms, conditions of approval (COA) are imposed in accordance with land use decisions made by the agencies. In other words, while a lease may not be subject to additional stipulations, conditions of approval identified through project level or site-specific environmental analysis may be required for proposed projects. Each condition of approval limits access to the lease to some extent whether through added cost or delay. Therefore, in reality, it is safe to say that all leases issued under standard lease terms are still subject to the same constraints imposed on stipulated leases. Further, some conditions of approval may be more of an impediment to exploration or development than lease stipulations.

While the Petroleum Industry uses the word “Access” as a catchall term, the term is not limited to the availability of federal lands for leasing. Clearly, leasing is an important aspect of access to federal lands for purposes of exploration and development; however, access also encompasses the industry’s ability to develop new wells in existing fields and can limit the duration of operations based on overlapping seasonal restrictions. As such, expansion of existing production often faces numerous impediments including:

ê High cost to industry and long delays for NEPA compliance;

ê Delays in land use plan revisions;

ê A wide variety of surveys and inventories on most projects for cultural, wildlife and other resource values that may or may not be present in a project area;

ê Delays in obtaining drilling and rights-of-way permits due to a lack of adequate federal staffing and funding in high volume leasing and development areas;

ê Financial burdens placed upon industry who may have to pay for contract personnel to work on permits in field offices;

ê The same restrictive management imposed to protect species listed as threatened or endangered under the Endangered Species Act are applied to unlisted species (i.e. sensitive, proposed and candidate species);

ê Endless petitions to the US Fish and Wildlife Service (FWS) to list plant and animal species without supporting scientific data; but, which cause federal agencies to change their management objectives from multiple-use to restricted use; and

ê Further, environmental groups are not only filing petitions with FWS to list a particular species with limited supporting scientific data; petitions are concurrently being filed by the same parties with BLM to manage the species’ habitat as an Area of Critical and Environmental Concern (ACEC). An area with an ACEC designation carries additional restrictions for mineral development.

ROADLESS CONSERVATION RULE

The Roadless Conservation Rule prevents road building on more than 58 million acres of the National Forest System — a move that will place 11.3 TCF of economically recoverable natural gas off limits to exploration and development. Ironically, this decision coincides with Administration warnings of shrinking gas supplies. The Bush Administration sees only “limited opportunities” to increase dwindling natural gas supplies over the next 12 to 18 months, calling for conservation to head off a summer shortage. Moreover,

Federal Reserve Chairman Alan Greenspan has publicly stated that dwindling supplies could add serious pressure to the US economy.

According to the Department of Energy Report, Undiscovered Natural Gas and Petroleum Resources beneath Inventoried Roadless and Special Designated Areas on Forest Service Lands, November 2000, 83 percent of the natural gas resource found in the Rocky Mountain Region is located in slightly less than 5 percent of the total proposed Inventoried Roadless Areas (IRA) nationwide. PAW and PLA urge Congress to support modification of the Roadless Conservation Rule. Removal of the 5% IRAs that overlie these important natural gas resources would still allow for the majority of the IRAs to be set aside while providing for development of the critically important natural gas resource base.

SPLIT ESTATE & DRAINAGE

Another major factor which industry must address when accessing federal minerals is severed estates (i.e. federal minerals / private surface). Before agencies will approve permits, the lessee must negotiate in “good faith” with the private surface owner to reach an agreement for protection of surface resources and reclamation of disturbed areas. Further, if an agreement cannot be reached, the agency requires adequate bonds to be in place sufficient to indemnify the surface owner against reasonable and foreseeable damages.

All costs negotiated in the Surface Use Agreement are the responsibility of the operator. It is important to note that the operator in most cases is only the lessee. They do not own the surface nor do they own the minerals. Operators contract for the exclusive right to develop a federal mineral lease at their own investment and associated risks.

When it comes to mineral development, the BLM has a statutory obligation to maximize the recovery of federal minerals and prevent “drainage” from occurring while providing protection to other resources. “Drainage” is defined as the “migration of oil or gas in a reservoir due to a pressure reduction caused by production from wells bottomed in the reservoir” (Manual of Oil and Gas Terms, Williams and Meyers, third edition). Not only can drainage occur from adjacent federal leases held by different lessees, drainage of federal minerals may occur when the lease is adjacent to producing private or state leases.

The permitting process for non-federal lands is more timely and predictable and, therefore, the most appealing for operators. It is possible that due to the permitting and regulatory process and potential legal challenges, it will be virtually impossible for lessees to develop domestic oil and gas resources; thereby, choosing to divert investments from development of federal minerals to other areas either domestically or over seas.

An example of drainage occurring today exists in the Powder River Basin in northeastern Wyoming. The Wyodak Coal Bed Methane Project Environmental Impact Statement Record of Decision (Wyodak EIS) was completed in 1999, which authorized the development of 5000 new wells. This cumulative analysis included wells to be developed on federal, private and state minerals. Due to the timeliness and predictability of acquiring state and private permits, many initial permits were sought on those lands instead of federal lands. The BLM recognized that this created a significant drainage situation and immediately conducted another environmental assessment to analyze an additional 2500 federal drainage wells (Wyodak Drainage Environmental Assessment). The importance of the Wyodak EIS and the Wyodak Drainage EA were to gather significant information regarding coal bed natural gas development and its associated impacts on other resources.

In 2000, BLM decided to conduct an additional EIS with a revised reasonably foreseeable development scenario before further development of federal leases outside of the Wyodak area would be authorized. A drilling moratorium was imposed on the majority of federal leases (again outside of the Wyodak area) and the leases were placed in suspense. While a detailed cumulative analysis was being conducted, development continued on private and state minerals creating significant drainage of federal minerals. The Record of Decision for the Powder River Basin Oil and Gas EIS was finally issued April 30, 2003 authorizing the development of approximately 51,000 coal bed natural gas and 3,200 non-coal bed natural gas wells in Wyoming.

“Environmental groups” filed four separate legal challenges in federal court immediately after the issuance of the decision. Because of the litigation, the Administration has instructed BLM to continue to refrain from approving permits while the lawsuits are being reviewed internally. As a consequence, no coal bed natural

gas drilling permits have been approved to date since the Record of Decision was issued. As a matter of information, currently there is a backlog of approximately 2000 permits in the BLM Buffalo Field Office of which 90% or more would prevent drainage from occurring on federal minerals. The money lost through drainage that would go to the federal treasury and the state of Wyoming is primarily due to protracted regulatory compliance with FLPMA, NEPA and frivolous litigation.

FRIVOLOUS LITIGATION

Another important factor to consider in the federal regulatory process is litigation by “environmentalist groups” whose sole purpose is to delay or deny development of natural resources. In Wyoming, virtually all lease sales, and most project level EAs or EISs, including geophysical projects, have been protested, appealed, or challenged in federal court. The same is true for the other Rocky Mountain States.

A strategy by some groups is to inundate an agency office by filing Freedom of Information Act requests (FOIA) or legal challenges of a federal decision either through the internal administrative process (State Director Reviews or Interior Board of Land Appeals) or in federal court. This requires a significant portion of agency time and personnel just to prepare the administrative record to respond to legal challenges rather than processing permits and conducting the necessary on-site inspections.

Some tout that the additional stipulations, mitigation measures, and delays in working through the public process is simply the cost of doing business on public lands: This is a flawed perception. As an example, the energy industry in Wyoming already pays its fair share to the federal government for the privilege of operating on public lands --between $500 million to nearly one billion dollars annually to the federal treasury through lease bonus bids, lease rentals and royalty payments.

It has become apparent that NEPA has become a “tool” that is used as the primary impediment to oil and gas development on federal lands. PAW and PLA support without qualification the Act’s provisions for public comment, identification of alternatives to the proposed action, and consideration of impacts and mitigation measures to be used. However, these same provisions are being used by some groups as opportunities to stop proposed projects without regard for cost and delay of impacts on land management agencies, the US taxpayer, or multiple users of the public lands.

The cost of “NEPA abuse” is high. For example, the burden of agencies’ management responsibilities frequently shifts to operators; such as preparation of NEPA documentation, resource inventories and species surveys, monitoring activities and ensuring adequate staff is available to process permits. All of these new obligations put a tremendous burden on industry’s ability to economically develop the resource for the benefit of the country. It is safe to say that the cumulative impacts of stipulations, conditions of approval and litigation is strangling industry’s ability to develop energy resources on federal lands and to supply much needed energy to the citizens of this country.

RECOMMENDATIONS

In conclusion, PAW and PLA appreciate Congress’ recognition of the important role access to federal lands plays in meeting the energy needs of the nation through its efforts to pass an energy bill. However, many of the additional measures discussed in this testimony can also be easily addressed through the regulatory process.

PAW and PLA recommend the following:

ê Reiterate the importance of federal lands in meeting the nation’s energy needs;

ê Provide adequate funding for BLM staffing to specifically address APD and Rights-of-Way backlogs;

ê Require timely issuance of leases in areas determined to be available for oil and gas leasing;

ê Require timely issuance of APD and Rights-of-Way;

ê Eliminate the 5% of Inventoried Roadless Areas in the Rocky Mountain Region that encompass 83% of the natural gas resources found within the areas covered by the Roadless Conservation Rule;

ê Encourage aggressive implementation and enforcement of recently issued BLM Instruction Memoranda (IM) that provide field guidance for improving processing of APDs and Rights-of-Way;

ê Recommend issuance of new IMs that eliminate redundant NEPA analyses; and

ê Require reimbursement to the prevailing party for reasonable attorney's fees, actual court costs incurred, or any other relief, which may be granted through a legal challenge of an agency decision.

Madam Chairwoman and members of the Subcommittee, thank you again for the opportunity to share with you our perspective regarding the "Oil and Gas Development on Public Lands".